



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2021-0553; FRL-9736-02-R2]

Approval of Air Quality Implementation Plans; New York; Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution for volatile organic compounds (VOC). The SIP revision consists of amendments to New York's Codes, Rules and Regulations (NYCRR) that implement control measures for Consumer Products. The intended effect of this action is to approve control strategies which will result in VOC emission reductions that will help attain and maintain the national ambient air quality standards (NAAQS) for ozone. These actions are being taken in accordance with the requirements of the Clean Air Act.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2021-0553. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Linda Longo, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3565, or by email at longo.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What is the background for this action?

On June 3, 2022 (87 FR 33699), the EPA published a Notice of Proposed Rulemaking that proposed to approve a State Implementation Plan (SIP) revision submitted by the State of New York on March 2, 2021, for purposes of revising Title 6 NYCRR part 235, "Consumer Products." The SIP revision applies to a group of household and commonly used products, referred to as "consumer products," with the goal of limiting and reducing Volatile Organic Compounds (VOC) emissions statewide.

The EPA's June 3, 2022, evaluation recognizes that the SIP revision is consistent with the Ozone Transport Commission Model Rule for consumer products and will help the State attain the NAAQS by improving air quality through reduced VOC emissions and promoting regional consumer product consistency. The revisions to 6 NYCRR part 235 are expected to reduce VOC released to the air by 5.3 tons per day statewide. Since the use of consumer products is highest in population centers, the VOC reductions in the New York City metro area alone, where the 2008 ozone standard is exceeded, is expected to be 3.4 tons per day. To achieve these emission reductions, new product categories were added with new VOC limits and existing product categories were revised to reduce their VOC limits. In addition, revisions were made in the definitions section at 6 NYCRR

section 235-2.1 to provide transitional language and to cite which emission standards apply before or after the January 1, 2022, compliance date.

The specific details of New York's SIP revision submittal and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's June 3, 2022, proposed rulemaking (87 FR 33699).

II. What comments were received in response to the EPA's proposed action?

In response to the EPA's June 3, 2022, proposed rulemaking on New York's SIP revision submittal, the EPA received one comment during the 30-day public comment period. After reviewing the comment, the EPA has determined that the comment is outside the scope of our proposed action or fails to identify any material issue necessitating a response. The comment does not raise issues germane to the EPA's proposed action. For this reason, the EPA will not provide a specific response to the comment. The specific comment may be viewed under Docket ID Number EPA-R02-OAR-2021-0553 on the <https://www.regulations.gov> web site.

III. What action is the EPA taking?

The EPA is approving New York's revisions to the New York SIP and amendment to 6 NYCRR part 235, "Consumer Products" with a State effective date of February 11, 2021. Specifically, this rulemaking will add nine new product categories and two new subcategories with new VOC emission limits and reduced VOC emission limits in ten existing product categories. The revisions will help the State to comply with federal requirements pertaining to attainment and maintenance of the ozone NAAQS. The attendant revisions to 6 NYCRR section 200, "General Provisions," section 200.9, Table 1, "Referenced material", for 6 NYCRR part 235 has been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the 6 NYCRR part 235, “Consumer Products,” regulations described in the amendments to 40 CFR part 52 as discussed in sections I. and III. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

¹ 62 Fed. Reg. 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Lisa Garcia,
Regional Administrator,
Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION
PLANS**

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION
PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH – New York

2. In § 52.1670, paragraph (c) is amended in the table by revising the entry for “Title 6, Part 235” to read as follows:

§52.1670 Identification of plan.

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(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
Title 6, Part 235	Consumer Products	2/11/2021	[insert date of publication in the Federal Register]	• EPA approval finalized at [insert Federal Register citation].
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